INTERNATIONAL SEABED AUTHORITY

ISBA

Legal and Technical Commission

Distr.
LIMITED

ISBA/3/LTC/INF.1
12 August 1997

ORIGINAL: ENGLISH

INTERNATIONAL SEABED AUTHORITY
Resumed third session
Kingston, Jamaica
18-29 August 1997

LETTER DATED 11 AUGUST 1997 FROM THE PERMANENT REPRESENTATIVE OF THE NETHERLANDS TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL OF THE AUTHORITY

Please find enclosed a paper by the Netherlands on environmental aspects of the Mining Code (see annex). The Netherlands considers it of the utmost importance that environmental rules and regulations, as well as the environmental principles, be included in the formulation of the Mining Code and would therefore like to make the paper available to the members of the Legal and Technical Commission.

Since meetings of the Legal and Technical Commission will start next week, we kindly ask you to have the present letter and its annex circulated as an official document of the Commission, enabling it to take the Netherlands' views into consideration during its deliberations.

(Signed) Erik W. KLIPP
Permanent Representative

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ANNEX

Environmental aspects of the Mining Code

1. In the formulation of the Mining Code it is essential to include environmental rules and regulations, as well as the environmental principles, to govern all aspects of deep seabed mining for the protection and preservation of the marine environment. Section 1, paragraph 5 (g), of the annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, calls upon the Authority to do just that: "... the Authority shall concentrate on ... adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment."

2. In addition to the obligations regarding the protection and preservation of the marine environment set out in the Convention, other legal and political instruments such as the Treaty on the European Union (Maastricht, 1992), article 130R, and Agenda 21, chapters 17 and 21, have endorsed environmental principles and measures for the protection and preservation of the marine environment.

3. These principles and measures are part of general international environmental law and need to be elaborated and specified in the Mining Code. The Mining Code should also adequately reflect the norms laid down in, inter alia, article 145 of the Convention, with a view to the prevention of pollution and the protection of the marine environment from harmful effects (interference) of activities carried out in the Area. Preventive action should be taken in the construction, operation and maintenance of installations in the Area with a view to their removal, the aftercare and restoration of the marine environment. The principles and measures should therefore apply to all stages of deep seabed mining, from prospecting to exploitation.

4. Although the present draft regulations on prospecting and exploration for polymetallic nodules in the Area (ISBA/3/LTC/WP.1) acknowledge that the activities and their specific requirements should be in accordance with the Convention, it does not clearly address these obligations in the specific requirements for exploration.

5. The Mining Code should include the precautionary principle as a guiding principle for activities in the Area and it should apply in all stages of deep seabed mining, from prospecting to exploitation. The specific application of this principle could then be effected in the regulations dealing with the requirements for prospecting (2), undertakings (16), the regulations on the "Approval of the plan of work" (18-22) and the regulation on terms and conditions for the protection and preservation of the marine environment (30).

6. Consideration should also be given to including the polluter pays principle in the regulations on sponsorship (10), applicable law (40) and responsibility and liability (41), in view of implementing the provisions on responsibility and liability for any environmental damage or harm to the marine environment.

7. The inclusion of these principles and a further elaboration of the environmental provisions of the Convention and other applicable standards for the protection and preservation of the marine environment in the Mining Code would give effect to the obligation of the Authority as laid down in section 1, paragraph 5 (g) of the Annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.